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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-03-NY-012
Church Ave Car Service, Inc.	)	
WPRB497	)	NAL/Acct. No. 200332380018
Brooklyn, NY	)	
	)	FRN: 0008-3694-80

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: March 31, 2003**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Church Ave Car Service, Inc. ("Church"), apparently violated Section 90.403(a)(2) of the Commission's Rules (the "Rules"),<sup>1</sup> by operating a base station transmitter on an unauthorized frequency of 36.08 MHz, and mobile units on an unauthorized frequency of 36.12 MHz. We conclude that Church is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On January 23, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 36.08 MHz and 36.12 MHz in Brooklyn, NY, to follow-up a previous investigation concerning operation on unauthorized frequencies in the Private Land Mobile Radio Services. The agents determined that Church, located at 3411 14<sup>th</sup> Avenue, Brooklyn, NY 11218, operated a base transmitter on a frequency of 36.08 MHz, and mobile units on a frequency of 36.12 MHz. There was no evidence of a Commission authorization for Church to operate a base station on 36.08 MHz and mobile units on 36.12 MHz in Brooklyn, NY.

3. On January 24, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 36.08 MHz and 36.12 MHz in Brooklyn, NY, and again determined that Church Ave Car Service, Inc., operated a base transmitter on 36.08 MHz, and mobile units on a frequency of 36.12 MHz. The agents conducted a station inspection and determined that Church Ave Car Service, Inc., was operating a base transmitter on an unauthorized frequency of 36.08 MHz, and mobile units on an unauthorized frequency of 36.12 MHz. The agents advised Carlos Betancourth, manager of Church, that its

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<sup>1</sup> 47 C.F.R. § 90.403(a)(2).

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base station and mobile units were operating on the unauthorized frequencies of 36.08 MHz and 36.12 MHz, respectively.

### III. DISCUSSION

4. Section 90.403(a)(2) of the Commission's Rules requires that licensees in the private land mobile radio services shall be directly responsible for the proper operation and use of each transmitter for which they are licensed. In this connection, licensees shall exercise such direction and control as to assure that the transmitter is being operated in a permissible manner. A review of Commission's records showed that Church Ave Car Service, Inc., was granted authority under its license, WPRB497, to operate one base station on a frequency of 463.200 MHz and 80 mobile units on a frequency of 468.200 MHz. Agents observed the base station operating on 36.08 MHz and mobile units operating on 36.12 MHz.

5. Based on the evidence before us, we find that Church operated a base station on an unauthorized frequency of 36.08 MHz, and mobile units on an unauthorized frequency of 36.12 MHz on January 23, 2003 and January 24, 2003, in willful<sup>2</sup> and repeated<sup>3</sup> violation of Section 90.403(a)(2) of the Rules.

6. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),<sup>4</sup> sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,<sup>5</sup> ("Act") which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>7</sup>, Church is hereby NOTIFIED of their APPARENT

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup>Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup>47 C.F.R. § 1.80.

<sup>5</sup>47 U.S.C. § 503(b)(2)(D).

<sup>6</sup>47 U.S.C. § 503(b).

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LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully violating Section 90.403(a)(2) of the Commission's Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Church SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380018 and FRN: 0008-3694-80.

10. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380018.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>7</sup>47 C.F.R. §§ 0.111, and 0.311.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Church Ave Car Service, Inc., 3411 14<sup>th</sup> Avenue, Brooklyn, NY 11218.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A – Condensed List of Small Entities, October 2002